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**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
MARBELLA LANDING TOWNHOMES**

THIS DECLARATION, made on the date hereinafter set forth by MARBELLA LANDING TOWNHOMES HOA, INC. a Texas Corporation, acting herein by and through its duly authorized officers, hereinafter referred to as "Declarant."

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WHEREAS, Declarant is the Homeowner Association governing certain property in Houston, County of Harris, State of Texas, which is more particularly described as:

Lots 1, 2, 3, 4, 6, 7, and 10 in Block 1 of Kendall Place, an addition in Harris County, Texas, according to the map or plat thereof recorded in Volume 241, Page 21 of the Deed records of Harris County, Texas.

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NOW THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I
DEFINITIONS

- 1.1. "Assessment" shall mean and refer to the fees, charges and other financial obligations which may be imposed upon the Owners of Townhomes by the Association to pay for Common Expenses as set forth herein, including without limitation, the annual Assessments, special Assessments and estimates thereof as determined by the Association.
- 1.2. "Association" shall mean and refer to **MARBELLA LANDING TOWNHOMES HOA, INC.**, its successors and assigns, created for the benefit and protection of the Owners and any mortgagees of record.
- 1.3. "Members of the Association" refers to the corporate Members of Marbella Landing Townhomes HOA, Inc., as established by the Association's governing documents, including, but not limited to, its Articles of Incorporation and its Bylaws. Unless the context of the passage clearly infers otherwise, the terms "Member" and "Members" refer to the Members of the Association.
- 1.4. "Board" or "Directors" refers to the Board of Directors of the Association.
- 1.5. "Common Area" shall mean all refer to any real property together with any Improvements thereon which may be conveyed to, owned or leased by the Association or which may be expressly designated as Common Area by this Declaration, including without

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limitation, any shared driveway or common drainage system, utility lines used jointly by two or more Owners and any portions of the Water Supply System used jointly by two or more Owners or any areas designated as "Common Areas" on any map or exhibit of Marbella Landing Townhomes. These Common Areas shall be for the common use by or benefit to all Owners and Occupants.

- 1.6. **"Common Expenses"** shall mean expenses attributable to the maintenance and replacement of the Common Area, including without limitation any common Water Supply System, common drainage facilities, common vehicular access gate, common pedestrian access gates, common paths or ways, together with any other expenses which the Association may designate as Common Expenses and any other Expenses for the common benefit of all Owners declared to be Common Expenses by this Declaration.
- 1.7. **"Declarant"** shall mean and refer to MARBELLA LANDING TOWNHOMES HOA, INC., a Texas corporation, or its successors and assigns.
- 1.8. **"Declaration"** shall mean this Declaration of Covenants, Conditions and Restrictions instruments as the same may be amended, modified or supplemented in accordance herewith.
- 1.9. **"Governing Documents"** shall mean and refer to any documents governing the creation and operation of the Association, and/or governing body thereof and this Declaration.
- 1.10. **"Improvements"** shall mean any buildings, structures, fixtures, additions and appurtenances to a Townhome or constructed or situated upon any Common Area.
- 1.11. **"Occupant"** shall mean a person or persons in occupancy or possession of a Townhome, regardless of whether said person is an Owner.
- 1.12. **"Owner"** shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Townhome. "Owner" includes contract sellers, but excludes those having only a security interest in a Townhome or any portion of the Property.
- 1.13. **"Plat"** shall mean and refer to the map or plat recorded in Volume 241, Page 21 of the Deed records of Harris County, Texas.
- 1.14. **"Property"** shall mean and included the Property described above and all Improvements and structures thereon and all rights, easements, and appurtenances belonging thereto.
- 1.15. **"Undeveloped Lot"** shall refer to any lot, parcel, or division thereof, intended by Original Declarant for the construction of Townhomes, but which was not ultimately developed as intended.
- 1.16. **"Water Supply System"** shall mean the master water meter, if any, and/or master water supply pipe, line or service situated upon the Property and providing water service to two or more Townhomes.

ARTICLE II
TOWNHOME AND COMMON AREA DESIGNATIONS AND DESCRIPTIONS

- 2.1. **Designation of Townhome.** The portion of the Property being more particularly described in the Preamble above is divided into parcels consisting of nineteen (19) separately designated and individual Townhomes as more particularly shown in Plat. Each Townhome is identified by a street address.
- 2.2. **Separable Units.** Each Townhome may be separable and may be conveyed, lease, or encumbered separately.
- 2.3. **Governmental Assessment.** Previous Declarant has given written notice to the Assessor's Office of the division and Ownership of the Property, as is provided by law, so that each Townhome is deemed a separate parcel and subject to separate Assessment and taxation.
- 2.4. **Common Area.** Declarant hereby designates the Common Area to be for the common use by or benefit to all Owners and Occupants. Every Owner and Occupant shall have, and all Owners and Occupants shall grant to all other Owners or Occupants or their invitees, an easement of access and a right of way and easement of enjoyment in, upon and over the Common Area, subject to all covenants, conditions, restrictions and easements set forth in this Declaration. Declarant does hereby grant in perpetuity to all Owners and Occupants and their invitees an easement and right-of-way for purposes of vehicular and pedestrian ingress and egress upon, over and across the Common Area and to and from such Owner's or Occupant's Townhome, but not for parking, occupancy, recreation, or any other use. Shared utilities are permitted. Any area that is not under the footprint of a Townhome shall be considered Common Area.
- 2.5. **Water Supply System.** If there is a common Water Supply System serving all of the Townhomes on the Property, then notwithstanding anything to the contrary set forth herein, such Water Supply System and all appurtenances thereto shall be deemed part of the Common Area and Declarant and Owners of all Townhomes shall, by this instrument, give and grant to one another an easement and right-of-way over, upon, and under the area of each Townhome at such location as shall be necessary for the purpose of installation, maintenance, repair, and/or replacement of such Water Supply System. Each of the Declarant and Owners of Townhomes shall do any and all things, and execute and deliver any and all documents, which may be necessary or appropriate to evidence such ownership of the Water Supply System and the easement with respect thereto. In no event shall the water supply pipes leading from the Water Supply System or any sewage pipes leading from a Townhome to any common sewage systems be considered to be part of the Water Supply System or part of the Common Area if such pipes serve only one Townhome.

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ARTICLE III
PROPERTY RIGHTS

- 3.1. **Owners' Easements of Enjoyment.** Every owner shall have a right and easement of enjoyment in and to the Common Area. These rights and easements pass with the title to every Townhome, subject to the following provisions:
- 3.1.1. the Association reserves the right to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Area;
 - 3.1.2. the Association reserves the right to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which assessment against his Townhome remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.
 - 3.1.3. the Association reserves the right to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.
- 2.2 **Delegation of Use.** Any owner may delegate, in accordance with the bylaws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.
- 2.3. **Title to the Common Area.** The Declarant hereby covenants for itself, its successors and assigns, that it will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens. The Common Area shall remain undivided and shall at all times be owned by the Association or its successors, it being agreed that this provision is necessary in order to preserve the rights of the Owners with respect to the operation and management of the Common Area. Notwithstanding the above, the Declarant reserves the right to grant, convey, dedicate or reserve easements over, on or under the Common Area for utility services.

ARTICLE IV
USE RESTRICTIONS AND PROTECTIVE COVENANTS

The Townhomes and the Common Area shall be occupied and used as follows:

- 4.1. **Use and Occupancy Restriction.** Subject to the provisions of this Declaration, no part of the Property may be used for purposes other than a private single family residence for the Owner, his family guests, and tenants. No Townhome shall be used or occupied for any business, commercial trade, professional purposes, or as a church or other religious institutional meeting place, either apart from or in connection with the use thereof as a residence, whether for profit or not.
- 4.1.1. The restrictions in section 4.1 do not prohibit an Occupant from:
 - (a) Maintaining a personal or professional library;
 - (b) Keeping personal business or professional records or accounts; or

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(c) Handling personal business or professional telephone calls or correspondence, which uses are expressly declared customarily incidental to the principal residential use and not in violation of this Declaration. This allowance does not permit: traffic to or from the Townhome or upon the Common Area by anyone for business purposes, storage of equipment, machinery, supplies or inventory, objectionable odors, or other nuisances or other violations of this Declaration.

4.2. **Obstruction and Use of Common Area.** There shall be no obstruction of the Common Area. Nothing shall be stored in the Common Area without the prior written consent of the Members, and the Common Area shall not be used for any commercial purposes.

4.3. **Insurance.** Nothing shall be done or kept in the Common Area which will increase the rate of insurance on the Common Area, without the prior written consent of the Members. No owner shall permit anything to be done or kept in the Common Area which will result in the cancellation of insurance on any part of the Common Area, or which would be in violation of any law. No waste will be committed or deposited in the Common Area.

4.4. **Nuisances.** No noxious or offensive activity shall be carried on, in, or upon any Townhome or the Common Area, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the other Occupants. This prohibition includes, but is not limited to, the following restrictions:

4.4.1. No repair work, dismantling or assembling of motor vehicles or any other machinery or equipment shall be permitted in any street, driveway or yard adjacent to a street, or in the Common Area.

4.4.2. No vehicle shall be parked on streets or driveways so as to obstruct ingress and egress by the Owners of Townhomes, their families, guests and invitees except for the reasonable needs of emergency, construction, or service vehicles for a time limited to as briefly as possible.

4.4.3. The streets are not intended for use by the Owners of Townhomes for parking or storing boats, trailers, camping units, or any personal vehicles and the Architectural Control Committee may insure the proper use of said areas in such legal manner as it deems necessary.

4.4.4. No loud noises, sounds, or noxious odors shall be permitted on the Property.

4.4.5. No illegal activities shall be permitted on the Property, including:

(a) the sale of spiritous, vinous, or malt liquors, or medicated bitters;

(b) any activity that would be a violation of the laws of the State of Texas, the United States or of local police, health, sanitary, building or fire codes and regulations.

4.5. **Temporary Structures.** No structures of a temporary character, trailer, basement, tent, shack, barn, servants' quarters or other out buildings shall be used on the Property at any time either temporarily or permanently. Used residences or other used structures may not be moved onto any Townhome. Trailers and motor vehicles shall not be used on any Building not at any time as a residence, whether temporarily or permanently.

4.5.1. Exceptions:

- (a) Temporary structures may be erected for use in connection with the repair or rebuilding of a Townhome or any portion thereof.
- (b) Builders attached to a particular, currently undeveloped, lot may erect and maintain such structures as is reasonably customary in connection with such construction and sale of such property, including, but without limitations, a business office, storage area, construction yards, signs, model units and sales offices. The allowance in this subsection is subject to revocation by the Members.

4.6. **Signs.** No sign of any kind shall be displayed to public view on any Townhome or Building.

4.6.1. Exception: the prohibition against signage is subject to Texas law regarding assertion of an Owner's Constitutionally protected rights.

4.7. **Oil and Mining Operations.** No gas or oil drilling, gas or oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Townhome nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Townhome.

4.8. **Livestock and Poultry.** No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Townhome, except that dogs, cats or other household pets, not to exceed a total of two (2) pets, may be kept provided that they shall not become a nuisance and are not kept, bred, or maintained for any commercial purposes or in "unreasonable quantities." It shall be the absolute duty and responsibility of each Occupant to clean up after such animals.

4.9. **Air Conditioners.** No window or wall type air conditioner shall be installed, erected, placed, or maintained on or in any Townhome.

4.10. **Garbage and Refuse Disposal.** No Townhome or portion thereof shall be used or maintained as dumping ground for rubbish. Trash, garbage or other waste shall be kept in sanitary containers in an area, screened by adequate planting or fencing so as to conceal them from public view except on days designated by the association of collection of rubbish. There is reserved in favor of the Association the determination of the method of garbage disposal, that is, whether it shall be through public authority or through private garbage disposal contractor(s). All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

4.11. **Sewage and Water.** No Sewage treatment system nor water well shall be permitted on any lot appurtenant to a Townhome.

4.12. **Use of Common Area.** Except in enclosed areas on Townhome, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon the Properties except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association's Members or their designated architectural committee. Except for the right of ingress and egress and the right and easement of enjoyment as defined herein, the Owners are hereby prohibited and restricted from using

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any of the Properties outside the interior property lines of each Townhome, except as may be allowed by the Association's Members. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit, and is necessary for the protection, of all Owners of the Properties. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area and the exteriors and roots of the residences, including but not limited to, parking areas and walks, shall be taken by the Members or by its duly delegated representatives.

- 4.13. **Exterior Appearance of Townhome and Clotheslines.** Each Owner or Occupant shall keep clean and in good condition and repair and exterior of his Townhome. No outside clotheslines shall be constructed or maintained. Personal clothing, rugs, and/or household linens may not be hung on any structures located on any Townhome within the sight of the Common Area, any street or adjacent Townhome. No aluminum foil or similar reflective material shall be used or placed over doors or on windows.
- 4.14. **Outside Antennas.** Not more than one satellite dish (not to exceed one (1) meter in diameter), shall be allowed. Any such dish shall be screened or situated away from public view.
- 4.15. **Non-Discrimination.** No action shall at any time be taken by the Association or its Members which in any manner would discriminate against any Owner or Owners in favor of the other Owners.
- 4.16. **Annoyance.** No activity shall be carried on upon any Townhome or the Common Area which might reasonably be considered as giving annoyance to neighbors of ordinary sensibilities and which might be calculated to reduce the desirability of the Properties as a residential neighborhood, even though such activity be in the nature of a hobby and not carried on for profit. The Members shall have the sole and exclusive discretion to determine what constitutes an annoyance.

ARTICLE V

ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

- 5.1 **Membership.** Every Owner, whether one or more persons or entities, of a Lot or a Townhome which is subject to assessment shall be a member of the Association. Such Owner shall remain a Member of the Association until his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be appurtenant to and may not be separated from ownership of any Townhome which is subject to assessment. Whenever the legal ownership of any Lot or Townhome passes from one person to another, by whatever means, it shall not be necessary that any instrument provide for transfer of membership in the Association, and no certificate of membership will be issued.
- 5.2. **Governance.** Subject to the By-Laws of the Association, the Association shall be governed by its Board of Directors.

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- 5.3. **Classes.** The Association shall have two classes of voting membership:
- 5.3.1. **Class A.** Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot or Townhome owned. When more than one person holds an interest in any Lot or Townhome, all such persons shall be members. The vote for such Lot or Townhome shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot or Townhome.
- 5.3.2. **Class B.** The Class B member(s) shall be the Declarant and shall be entitled to three (3) votes for each Townhome or Lot in which it holds the interests required by Section 5.1. The Class B membership shall cease to be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership. Upon this event occurring, the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Townhome or Lot in which it holds the interests required for membership under Section 5.1.

ARTICLE VI

GENERAL RIGHTS AND OBLIGATIONS OF OWNERSHIP

- 6.1. **Ownership.** A Townhome will be a fee simple estate and may be held and owned by any person, firm, corporation, or other entity singularly, as joint tenants, as tenants-in-common, or in any real property ownership or relationship recognized under the law of the State of Texas.
- 6.2. **Exclusivity.** Each Owner shall be entitled to exclusive ownership and possession of his Townhome subject to the rights and obligations set forth herein.
- 6.3. **One-Family Residential Dwelling.** Each Townhome shall be occupied and used or leased by the Owner or Occupant only as and for a single family residential dwelling for the Owner, Occupant, their families, social guests, or tenants.

ARTICLE VII

MAINTENANCE AND REPAIRS

- 7.1. **Definition and Association's Maintenance Obligations.** In addition to maintenance upon the Common Areas, the Association shall provide exterior maintenance upon each Townhome which is subject to assessment hereunder as follows: exterior parking lot; gate maintenance and upkeep (if any); exterior paint to each Townhome (if controlled by Association); replace (but not in the event of fire, or other casualty loss normally covered by insurance on the premises) and care for Townhomes; gutters and downspouts (if any); exterior building surfaces; fences, trees, shrubs, grass, walks (i.e., landscaping and lawn maintenance); water distribution system owned by the Association; and sewer, storm, gas and electric power service lines and pipes; and other exterior improvements. Exterior maintenance shall not include: glass surfaces; enclosed patio areas (if any); windows and doors and their fixtures of hardware; landscaping installed by Owners (if any); exterior light

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fixtures operated from a residence; air conditioning equipment; and utility company meters, circuit breakers and switch panels.

7.2. **Owners' Maintenance Obligations.** Each owner shall maintain and keep in repair all personal property or fixtures added and affixed to the exterior of the residence and the owner shall maintain and keep in repair the following equipment and lines located outside the residence: paving, air conditioning compressor condenser, including pipes and electrical lines connecting same to the residence, sanitary sewer line connecting the residence to the sanitary sewer collection system, electric power service conductors from the exterior of the building to the point of connecting to the electric utility company's junction box or transformer, electric circuit breakers, any portion of natural gas, and/or telephone service lines located on the Townhome but not maintained by the gas and/or telephone companies. However, any lines, pipes, wires, conduits or systems running through a residence which serve one or more other residences and which are not maintained by any utility company, shall be operated, repaired and maintained by the Owners of the shared utilities, and shall not be disturbed or relocated by an Owner without the written consent and approval of Declarant or the Association.

7.2.1. An owner shall do no act, nor perform any work that will impair the structural soundness or integrity of another residence or impair any easement or hereditament, nor do any act, nor allow any condition to exist, which will adversely affect the other residences or their Owners.

7.3. **Neglect of Owner.** In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, invitees, employees or agents, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Building Plot is subject.

7.4. **Authority of Association.** In the event an Owner is responsible for certain exterior maintenance as set forth in the Rules and Regulations of the Association and such Owner shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Members, the Association, after approval by two-thirds (2/3) vote of the Members, shall have the right, through its agents and employees, to enter upon said Townhome and to repair, maintain, and restore the Townhome and any improvements erected thereon. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Building Plot is subject.

7.5. **Subject to Amendment.** Each Owner or Occupant shall comply strictly with the provisions of this Declaration, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due for damages or for injunctive relief, or both, maintainable by an aggrieved Owner or the Association.

ARTICLE VIII
COVENANT FOR MAINTENANCE ASSESSMENTS

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- 8.1 **Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Townhome owned within the Properties, hereby covenants, and each Owner of any Townhome by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments of charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.
- 8.2 **Purposes of Assessments.** The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area.
- 8.3 **Maximum Annual Assessment.** Until January 1 of the year immediately following the execution of this Declaration, the maximum annual assessment shall be One Thousand Two Hundred dollars (\$3600.00) per Townhome.
- (a) From and after January 1 of the year immediately following the execution of this Declaration, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.
 - (b) From and after January 1 of the year immediately following the execution of this Declaration, the maximum annual assessment may be increased above 5% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.
 - (c) The Members may fix the annual assessment at an amount not in excess of the maximum.
- 8.4 **Special Assessments for Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of three-quarters (3/4) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.
- 8.5 **Notice and Quorum for Any Action Authorized Under Sections 8.3 and 8.4.** Written notice of any meeting called for the purpose of taking any action authorized under Sections 8.3 or 8.4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting

shall be one-half (1/2) of the required quorum at the preceding meeting. No such meeting shall be held more than 60 days following the preceding meeting.

8.6. **Rate of Assessment.** One hundred percent (100%) of the annual and special assessments for all Townhomes are to be provided by Townhomes with a completed residence sold to individual homebuyers.

8.6.1. In the event the maximum assessments (including increases allowable under Section 8.3) are insufficient to cover the actual costs of maintaining the Common Area within the Properties, which is chargeable against the residential units located in MARBELLA LANDING, Declarant shall be obligated to provide the MARBELLA LANDING TOWNHOMES HOA with the amount required to make up such deficit.

8.7. **Date of Commencement of Annual Assessments; Due Dates.** The annual assessments provided for herein shall commence as to all Townhomes on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Members shall fix the amount of the annual assessment against each Townhome at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Members. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Townhome have been paid.

8.8. **Transfer Fee.** In addition to the Annual Assessment and any Special Assessment as detailed in Sections 8.3 and 8.4, there shall be due owing to the Association, a One Hundred Seventy-Five dollar (\$175.00) transfer fee for any sale or transfer of any Property. This fee shall be paid by the purchaser of the property, and is due upon taking possession of the Property from the previous Owner.

8.9. **Effect of Nonpayment of Assessments and Fees; Remedies of the Association.** Any assessment and/or fee not paid within thirty (30) days after the due date shall bear interest from the due date at the highest rate of interest per annum allowed in the State of Texas. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Townhome.

8.10. **Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or mortgages imposed on any Townhome to secure debt incurred for the purchase price thereof, or for improvements thereto. Sale or transfer of any Townhome shall not affect the assessment lien. However, the sale or transfer of any Townhome pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Townhome from liability for any assessments thereafter becoming due or from the lien thereof.

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8.11. **Exempt Property.** All properties dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvement devoted to dwelling use shall be exempt from said assessments.

8.12. **Insurance.**

8.12.1. The Members reserve the right to obtain and continue in effect blanket property insurance to insure the buildings and structures in the Common Areas and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, and said insurance may include Coverage against vandalism.

8.12.2. The Members reserve the right to obtain comprehensive public liability insurance in such limits as it shall deem desirable, insuring the Association, its Members, agents and employees, and each owner, from and against liability in connection with the Common Area.

8.12.3. Each Owner shall be responsible at his own expense and cost for obtaining his own personal insurance of the contents of his own residence, garage, carport or parking space, including decorations, furnishings and personal property therein, and his personal property stored elsewhere on the Properties; and for his personal liability not covered by liability insurance for all Owners obtained as a part of the common expense.

8.12.4. The Association, or its duly authorized agent, reserves the right to obtain insurance for such Owner's Townhome against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard. If the Association obtain insurance, such policy will adhere to the following guidelines:

(a) All such insurance coverage shall be written in the name of the Association as Trustee for the townhouse owner.

(b) Premiums for insurance obtained by the Association on individual townhouses shall not be part of the common expense but shall be an expense of the specific townhouse or townhouses so covered and a debt owed by the Owner and shall be collectible by any lawful procedure permitted by the laws of the State of Texas. **If said debt is not paid within thirty (30) days after notice of such debt, such amount shall automatically become a lien upon such Owner's Townhome and townhouse and shall continue to be a lien until fully paid.** This insurance debt lien shall be subordinate to the lien of any purchase money and/or improvement mortgages and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments.

(c) In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Association, the Association, shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which Bank or institution are insured by a Federal governmental agency, with the proviso agreed to by said Bank or institution that such funds may be withdrawn only by signature

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of at least one-third (1/3) of the members of the Association, or by an agent duly authorized by the Members.

- (d) The Members shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Members shall levy a special assessment against all owners of the damaged townhouses in such proportions as the Members deem fair and equitable in the light of the damage sustained by such townhouses to make up any deficiency, except that the special assessment shall be levied against all townhome owners, so established by Section 8.1 above, to make up any deficiency for repairs or rebuilding of the Common Area not a physical part of a townhouse unit.
- (e) In the event that such proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagee and owner of the damaged townhouses in such proportions as the Members deem fair and equitable in the light of the damage sustained by such townhouses.
- 8.12.5. Nothing contained in subsection 8.11.4 above shall preclude an owner from obtaining his own personal insurance on his own townhouse, provided that such Owner is able to supply proof of adequate coverage to the Members' complete satisfaction. In the event of damage or destruction by fire or other casualty to any townhouse or other property covered by insurance written in the name of an individual owner, said Owner, shall, with concurrence of the mortgagee, if any, upon receipt of the insurance proceeds, contract to repair or rebuild such damaged or destroyed portions of such townhouse or other property in a good workmanlike manner in conformance with the original plans and specifications of said townhouse. If for any reason whatsoever, such owner should refuse or fail to as repair and rebuild any and all the damage to such townhouse on other property within thirty (30) days regardless of whether or not the insurance proceeds are sufficient to pay all the costs repair and restoration, the Association, by and through its Members, is hereby irrevocably authorized by such Owner to repair and rebuild any such townhouse or other property in a good and workmanlike manner in conformance with their original plans and specifications. The owner shall then promptly repay the Association the amount actually expended for such repairs plus interest thereon at the highest rate per annum allowed in the States of Texas, and the Association shall have a lien securing the payment of same identical to that provided above in this section securing the payment of insurance premiums and subject to foreclosure as above provided.
- 8.12.6. Should any mortgagee fail to concur in the application of the insurance proceeds to the cost of repair and restoration, such proceeds shall first be applied to the sums secured by the first mortgage, with the excess, if any, applied to the cost of repair and restoration of such townhouse and other property.
- 8.12.7. All costs, charges and premiums for all insurance that the Members authorized as provided herein, except on the individual Townhomes, shall be a common expense of all Owners and be a part of the maintenance assessment.

- 8.13. **Utility Bills.** Each Owner shall pay directly to the utility company furnishing such service the cost; or the respective services used or consumed by him. In the event the Association contracts with a waste disposal company for garbage pickup and disposal, the cost of garbage pick-up and disposal shall be billed to the Association. The Association will then collect each Owner's pro-rata share of the debt, based upon the square footage of each residence. Such cost shall not be a part or the common expense, but shall be a debt; owed by the Owners of the specific townhouse or townhouses so served. The debt will be collectible by any lawful procedure permitted by the laws of the State of Texas. In addition, if said debt is not paid within thirty (30) days after notice of such debt, such amount shall automatically become a lien upon such Owner's Townhome and townhouse and shall continue to be a lien until fully paid- This lien shall be subordinate to the lien for any purchase money and/or improvement mortgages and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments.

ARTICLE IX
ARCHITECTURAL CONTROL

- 9.1. No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, heights, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to structures and topography by the Members of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Members. In the event the Members, or their designated committee, fail to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, the applicant is allowed and encouraged to remind the Members of the Request. If the Members, or their designated committee, fails to approve or disapprove such design and location within an additional sixty (60) days, after said Request, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE X
PARTY WALLS

- 10.1. **General Rules of Law to Apply.** Each wall unit is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Townhomes shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or emissions shall apply thereto. If a wall which is intended as a party wall is situated entirely on one townhouse building plot instead of on the dividing line between townhouse building plots, due to error in construction, such wall shall nevertheless be deemed to be on the dividing line and shall constitute a party wall for the purposes of this Article. Reciprocal easements shall exist upon and in favor of the adjoining townhouse building plots for the maintenance, repair and construction of party walls.

- 10.2. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in proportion to such use.
- 10.3. **Destruction by Fire or other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice. However, operative rules of law may allow a larger contribution from other Owners based upon the other Owners' legal liability.
- 10.4. **Weatherproofing.** Notwithstanding any other provision of this Article, an owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost furnishing the necessary protection against the elements.
- 10.5. **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- 10.6. **Arbitration.** In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each Party shall choose one arbiter, and such arbiters shall choose one additional arbiter. Any decision made by the arbiters shall be by a majority of all the arbiters. Should any party refuse to choose an arbiter within ten (10) days after written request, the Members shall select an arbiter for the refusing party.

ARTICLE XI

RE-SUBDIVIDING AND CONSOLIDATION OF TOWNHOMES

- 11.1 **Final Refusal.** Subject to State and local law, and a Right of Final Refusal possessed by the Members of the Association, any Townhome or part hereof may be re-subdivided or consolidated with any adjoining Townhome or Townhomes or part or parts thereof to constitute a single Townhome on which a residence may be constructed. This allowance is also subject to approval by the Architectural Control Committee, if one has been established.

ARTICLE XII

EASEMENTS

- 12.1 **Construction.** Each Townhome and the Property included in the Common Area shall be subject to an easement for encroachments created by construction, settling and overhangs as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing two (2) or more residences is partially or totally destroyed, and then rebuilt, the Owners so affected agree that minor encroachments of parts of the adjacent residential units on Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

12.2. **Utility, Emergency, and Association.** There is hereby created a blanket and perpetual easement upon, across, over, under and above all of the Properties for ingress, egress, installations, replacing, repairing and maintaining all utilities, including but not limited to water, sewers, gas, telephones and electricity.- By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said residences. An easement is further granted to all police, fire protection, ambulance, garbage and trash collector pick-up vehicles and all similar persons to enter upon the common Area in the performance of their duties. Further, an easement is hereby granted to the Association, its officers, agents, employees, and to any management company selected by the association to enter in or to cross over the Common Area and any Townhome to perform the duties of maintenance and repair of the residence or common Area provided for herein. Notwithstanding anything to the contrary contained in the paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Properties except as initially programmed and approved by the Declarant or thereafter approved by Declarant or the Association's Members. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement without conflicting with the terms hereof. The easements provided for in this Article shall in no way affect any other recorded easement on said premises.

12.3 **Use of Easements.** Easements for underground utility services may be crossed by driveways and walkways provided the Declarant makes prior arrangements with the utility furnishing service. Such easements for underground services shall be kept clear of all other improvements, including building, patios, or other pavings, other than crossing walkways or driveway, and neither Declarant nor any utility Company using the easements shall be liable for any damage done by either of them or their assigns, their agents, employees, or servants, to shrubbery, trees, flowers, or other improvements of the Owner located on the land covered by said easements.

12.4. **Changes and Additions to Easements.** The Declarant reserves the right to make minor changes and additions to the above easements, as to any Townhomes owned by it, for the purpose of efficiently and economically installing and operating above mentioned utilities.

ARTICLE XIII **MORTGAGEES**

13.1. **Notice to Association.** The Members of the Association reserves the right to require Owners to notify the Association of the Owner's mortgage(s). The Members further reserve the right to maintain such information in a book entitled "Mortgages of Townhouses."

13.2. **Notice of Default.** The Members reserve the right of the Association to notify a first mortgagee in writing, upon request of such mortgagee, of any default by the mortgagor in the performance of such mortgagor's obligations as set forth in the Declaration which is not cured within thirty (30) days.

- 13.3. **Taxes and Other Charges on Common Area.** The Members reserve the right of the Association to immediately reimburse first mortgagees who may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area; or who may pay overdue premiums on hazard insurance policies; or who may secure new hazard insurance coverage on the lapse of a policy. If the Association reimburses first mortgagees for such lapses, the Owner(s) responsible for such lapses must reimburse the Association for that expenditure.
- 13.4. **Examination of Books.** The Members reserve the right of the Association to permit first mortgagees to examine the books and records of the Association during normal business hours.
- 13.5. **Reserve Fund.** The Members reserve the right to establish an adequate reserve fund for replacement of the Common Area property and fund the same by regular monthly payments rather than by special assessments.
- 13.6. **Annual Audits.** The Members reserve the right of the Association to furnish each first mortgagee an annual audited financial statement of the Association within ninety (90) days following the end of each fiscal year of the Association.
- 13.7. **Notice of Meetings.** The Members reserve the right of the Association to furnish each first mortgages upon request of such mortgagee, prior written notice of all meetings of the Association and permit the designation of a representative of such mortgagee to attend such meetings, one such request to be deemed to be a request for prior written notice of all subsequent meetings of the Association.
- 13.8. **Notice of Amendment to Declaration, etc.** The Members reserve the right of the Association to furnish each first mortgagee prior written notice for any material amendment to the Declaration, Bylaws, or Articles of Incorporation of the Association.
- 13.9. **Leases.** The Association shall require that all leases of any townhouse units must: (i) be in writing, and (ii) provide that such leases are specifically subject; to all respects to the provisions of the Declaration, Article of Incorporation, and Bylaws of the Association and that any failure by the lessee to comply with; the terms and conditions of such documents shall be a default under such leases. Other than the foregoing, there shall be not restriction on the right of any townhouse owner to lease his unit.
- 13.10. **Notice of Damage or Destruction.** The Members reserve the right of the Association to furnish the first mortgagees timely written notice of any substantial damage or destruction of townhouse units and of any part of the common Area and facilities.
- 13.11 **Notice of Condemnation or Eminent Domain.** The Members reserve the right of the Association to furnish the first mortgagees timely written notice of any condemnation, or eminent domain proceeding regarding any portion of a townhouse unit or of the Common

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areas and facilities and of any proposed acquisition of all or any part of such properties through Condemnation or eminent domain proceedings.

- 13.12. **Management Agreements.** Any management agreement entered into by the Association will be terminable by the Association for cause upon not more than thirty (30) days written notice, and the term of such management agreement will not exceed the period of one (1) year, renewable by agreement of the parties to such agreement for successive one (1) year periods.
- 13.13. **Delegations of Owner's Use of Common Area.** Regarding an Owner's delegation of his rights of enjoyment to the Common Areas and facilities as provided for in Article II, Section 2 of this Declaration, no such delegation shall work a severance of the rights of enjoyment of the Common Areas and facilities from the ownership of a Townhome, and any such delegation by any owner shall automatically terminate upon conveyance of legal title to such Townhome by said owner.
- 13.14. **Exemption From Right of First Refusal.** When any first mortgagee comes into possession of a Townhouse pursuant to the remedies provided in the mortgage, such as foreclosure of the mortgage or deed of trust, or deed in lieu of foreclosure, such mortgagee shall be exempt from any "right of first refusal" or other restriction on the sale or rental of the mortgaged Townhouse which the Association might have. However, the Association will still require adherence to the signage requirements listed herein.

ARTICLE XIV
GENERAL PROVISIONS

- 14.1. **Enforcement.** The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association or any Owner shall also have the right, but not the obligation to compel another to make repairs or perform maintenance, abide by architectural use or other rules or restrictions, and in general to enforce the duties and obligations set forth in this Declaration by any means permitted hereunder or by law including, but not limited to the filing of a lawsuit to obtain a restraining order, injunction, or mandatory injunction or other Court Order. The non-complying Owner shall be responsible for reimbursing the prevailing Association or Owner for all costs of any such enforcement including, but not limited to, the cost of delivering all notice letters and demands, court costs and attorney's fees.
- 14.2. **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.
- 14.3. **Duration.** The rights, use easements and privileges of the Owners in and to the Common Area as provided for herein shall be deemed to be covenants running with the land and shall

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be of perpetual duration. All other provisions, restrictions, covenants and conditions of this declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded; after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by not less than two-thirds (67%) per cent of the Townhome Owners. An amendment must be recorded in the Real Property Records of Harris County, Texas.

14.4. **Amendments and Corrections by Declarant.** The Declarant reserves and shall have the right at any time and from time to time, without the joinder or consent of any Owner or any other person, to correct and amend this Declaration by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of correcting any typographical error, ambiguity or inconsistency appearing in this Declaration, provided that any such amendment shall be consistent with and in furtherance of the general plan and scheme of development as evidenced by this Declaration, and shall not impair the vested property rights of any home owner or his mortgagee.

14.4.1. **Owner Amendments.** This Declaration may be revoked or otherwise amended if the Owners representing an aggregate ownership interest of not less than two-thirds (2/3) of all Townhomes upon the property agree to such revocation or amendment by instruments duly recorded.

14.5. **Rights of Mortgagees, Trustees, or Lienholders.** No violations of any of these restrictions, covenants, or conditions, shall affect or impair the rights of any Mortgage, Trustee, or Lienholder under any mortgage or deed of trust, or the rights of any Mortgage, Trustee or Lienholder under any such mortgage or deed of trust.

14.6. **Dedications.** Those tracts of land described and designated "Private streets," are hereby perpetually dedicated, established and set aside as a non-exclusive easement for street purposes for the common use, benefit and enjoyment of the Owners and/or occupants of the Townhomes which form a part of the Properties, to serve the Properties as streets for access, ingress and egress to and from each Townhome to a street dedicated to public use. Easements affecting the Properties are hereby reserved as shown on the recorded plat referred to for the installation, operation and maintenance of utilities and drainage facilities. All dedications, limitations, restrictions and reservations shown on said plat are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance or to be executed by or on behalf of Declarant, conveying said property or any part thereof.

14.7. **Taxes.** All taxes which may become liens against a Townhome shall relate only to the individual Townhome(s) and not to the Property as a whole.

14.8. **Judicial Partition.** There shall be no judicial partition of any Townhome, nor shall Declarant or any person acquiring any interest in the Property or any part thereof seek any such judicial partition.

14.9. **Notice.** All notices, demands or other notices intended to be served upon an Owner shall be delivered by personal or courier delivery or by deposit in the United States mail, certified

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mail, postage prepaid, address in the name of such Owner at the Townhome or other address of such Owner which has been given to the Association in writing.

14.10. **Omissions.** In the event of the omission from this Declaration of any word, sentence, clause, provision or stipulation which shall be necessary for the accomplishment of the intent and purposes hereof, or any part thereof, then such omitted matter shall be supplied by inference.

14.11. **Number and Gender.** Whenever used herein, unless the context shall otherwise provide, the singular number shall include the plural, and the use of any gender includes all genders.

14.12. **Undeveloped Lots.** The covenants, obligations, and restrictions contained herein apply to Undeveloped Lots in the same manner as all other Property. Any development to be recommenced on the Undeveloped Lots will do so in a manner that comports with this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be signed, sealed, and delivered by its authorized officers on this the 13 day of OCTOBER, 2015.

MARBELLA LANDING TOWNHOMES HOA, INC.
A TEXAS CORPORATION

By: MARBELLA LANDING TOWNHOMES HOA, INC.
a Texas Corporation



JASON FREEMAN,
President

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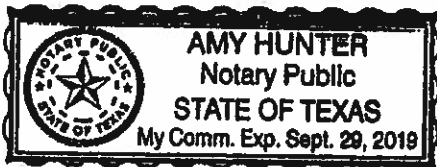
Christopher M. Choak ✓/
The Choak Firm
2000 Smith Street
Houston, TX 77002

STATE OF TEXAS)

COUNTY OF HARRIS)

BEFORE ME, the undersigned authority on this day personally appeared Jason Freeman, President of Marbella Landing Townhomes HOA, Inc., a Texas corporation, known to me as the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same in her capacity as President of the Marbella Landing Townhomes HOA, Inc. for the purposes expressed in the foregoing instrument.

The above instrument was acknowledged to before me on this the 13th day of October, 2015.



[Signature]
Notary Public, State of Texas.

My Commission Expires: Sept. 29, 2019 -

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FILED

2015 OCT 28 PM 1:01

Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL, OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS VOID AND UNENFORCEABLE UNDER FEDERAL LAW.
THE STATE OF TEXAS
COUNTY OF HARRIS

I hereby certify that this instrument was FILED in File Number Sequence on the date and at the time stamped herein by me; and was duly RECORDED, in the Official Public Records of Real Property of Harris County, Texas.

OCT 28 2015



Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

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